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Attorneys For: Plaintiff and the Class

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT FLETCHER, on behalf of himself
 and all others similarly situated,

Plaintiff,

vs.

THE TORO COMPANY, a Delaware
 Corporation, and DOES 1-100, inclusive

Defendants.

CASE NO.: 08-CV-2275 DMS (WMC)

**PLAINTIFF'S NOTICE OF MOTION
 TO REMAND TO STATE COURT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF; [PROPOSED] ORDER;
 CERTIFICATE OF INTERESTED
 PARTIES**

Date: January 30, 2009

Time: 1:30 p.m.

Courtroom: 10

Complaint filed: November 6, 2008

NOTICE IS HEREBY GIVEN that on January 30, 2009 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 10 of this Court, Plaintiff, ROBERT FLETCHER ("Plaintiff"), will move for an Order remanding this action to State Court, and an award of attorney fees and costs.

The Notice of Removal filed by Defendant THE TORO COMPANY fails to introduce any evidence (admissible or otherwise), to support its allegation that the amount in controversy herein exceeds the federal minimum jurisdictional limit and thereby fails to meet its burden to prove the same. An award of fees and costs is justified because Toro's attempted removal of the case was made in bad faith and without any reasonable legal or factual basis.

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1 The Motion is based on this Notice of Motion, the Declaration of Cary A. Kinkead, the
2 Memorandum of Points and Authorities set forth below, the papers and records on file herein,
3 and on such oral and documentary evidence as may be presented at the hearing of the motion.

4 Dated: December 29, 2008

HARRISON PATTERSON O'CONNOR &
KINKEAD LLP

6 By: /s/
7 James R. Patterson
8 Cary A. Kinkead
9 Attorneys for the Plaintiff and the Class
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